

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	DECLARATION OF PROFESSOR
vs.)	PHILIP JOHNSON PhD;
)	EXHIBITS "A" - "G"
HAWAIIAN EXPRESS SERVICE,)	
INC., a California corporation; et al.,)	
)	
Defendants.)	
_____)	

DECLARATION OF PROFESSOR PHILIP JOHNSON PhD

I, PROFESSOR PHILIP JOHNSON, am a full professor of Computer Science at the University of Hawaii, Manoa. I have been asked to provide expert testimony in this case on behalf of Mr. Berry and I make this declaration under the penalty of perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters herein, I am competent and willing to do so.

1. Exhibit "A" attached hereto, is true and correct copy of a screen print of the Microsoft Access Database file "Auxiliary Logistic Screens - Converted" that I have confirmed, by viewing the actual file in Mr. Hogan's office, is a true

EXHIBIT "D"

and correct screen print excerpt of that database file. The "MsysObjects" table of this database screen file, as shown in the second and third pages of Exhibit "A", evidence that this database screen file was linked to Mr. Berry's database "FCS Logistics Data.Mdb" on June 17, 2003. This is also supported by the "Statistics" drop down box of this file's "Properties" box shown on the third page of this Exhibit, that evidences that the file, containing this link to "FCS Logistics Data.Mdb" was modified on July 1, 2003. The Linked Table Manager of "Auxiliary Logistic Screens - Converted" as set forth on the fourth page of this Exhibit also evidences that at the time this file was acquired in the Guidance Software, Inc. "After" in July 2003, these database screens were still linked to the FCS Logistics Data.mdb Access database.

2. Attached hereto as Exhibit "B" is a true and correct copy of screen prints from the file "Tariff 60 Bill of Lading6". I have confirmed by viewing the actual file in Mr. Hogan's office that it is a true and correct screen print of that Crystal Report file. The second page of this exhibit shows that a report generated by this file was last printed on May 7, 2003, and the file was last saved on June 30, 2003. The third page evidences that this Crystal Report file was linked to the "FCS Logistics Data" Access database and that it was last saved on June 30, 2003.

3. Attached hereto as Exhibit "C" is a true and correct copy of screen prints from the Crystal Report file "Tariff 60 Bill of Lading3 ". I have confirmed by viewing the actual file in Mr. Hogan's office that it is a true and correct screen print of that Crystal Report file. The second page of this exhibit shows that a report containing contemporaneous data of shipments was generated by this file that was last printed on June 3, 2003 when this was also last saved. The third page evidences that this Crystal Report file was linked to the "FCS Logistics Data" Access database when it was last saved. Based on this Exhibit "C" and Exhibits "A" and "B" and the review of other similar files in Mr. Hogan's office and my expertise in the field of computer science, I conclude that Mr. Berry's FCS Logistics Data Access database continued to be linked to software that was used at Fleming in the Month of June 2003 to as late as June 30, 2003 when Exhibit "B" shows it was last saved.

4. Attached hereto as Exhibit "D" is a copy of screen prints from the Microsoft Access database screen file "FHL Data Screens". I have confirmed by viewing the actual file in Mr. Hogan's office that it is a true and correct screen print of that file. Based on my knowledge in the field of Computer Science, this exhibit evidences that "FHL Data Screens" was linked to Mr. Berry's database, "FCS Logistics Data.mdb" on December 9, 2002 as evidenced by that second page

of that exhibit. As evidenced by the third page of this exhibit, it remained linked to Mr. Berry's FCS Logistics Data.mbd when Guidance Software captured it in its imaging in July 2003.

5. Attached hereto as Exhibit "E" is a true and correct copy of screen prints of the Crystal Report file "SIT Query". I have confirmed by viewing the actual file in Mr. Hogan's office that it is a true and correct screen print. As set forth in page two of this exhibit, this Crystal Report was created on June 10, 2003 and last saved on July 3, 2003. The third page evidences data that is contemporaneous with the June to July 2003 period. The last page evidences that this report was linked to data contained in the "FHL Data.mdb" Access database file. The Set DataSource Location properties on page 4 of this exhibit also evidence that the file was located in a directory named g:\data\archive\dillonlogisticsdatabase\currentversion\fhl data.mdb.

6. Attached hereto as Exhibit "F" is a true and correct copy of screen prints of the of the Crystal Report file "Receiving Schedule4". I have confirmed by viewing the actual file in Mr. Hogan's office that it is a true and correct screen print of the actual file. This file evidences that it was used on July 4, 2003 to print a report that was linked to "FHL Data.mdb," an Access database.

7. Attached hereto as Exhibit "G" is a true and correct copy of screen

prints of the Crystal Report, file "Auto Bill14". I have confirmed by viewing the actual file in Mr. Hogan's office that it is a true and correct screen print of the file. This file evidences that it was last saved on June 24, 2003 and was linked to an Access database, FHL Data.mdb.

8. Based on the evidence that I have reviewed, and my knowledge and expertise in the field of computer science, I conclude that Fleming continued to link to a copy of FCS Logistics Data.mdb up to and including June 30, 2003 when the file evidenced by Exhibit "B" was last saved. In addition, Fleming linked to the file named "FHL Data.mdb" after June 9, 2003 and at least up to July 4, 2003 as evidenced by Exhibits "E" "F" and "G."

Dated: Honolulu, Hawaii July 7 2005

Philip Johnson
PHILIP JOHNSON, PhD

MDB Files

File Edit View Favorites Tools Help

Back Forward Search Folders View Show Details

MDB Files

Auxiliary Logistics Screens - Converted

Microsoft Access Application

7/1/2003 7:36 PM

32 KB

Attributes: (normal)

Name	Size	Type	Modified
2) dmy4	404 KB	Microsoft Access Ap...	7/22/2002 2:05 PM
2) dmy5	404 KB	Microsoft Access Ap...	7/22/2002 2:05 PM
2) dmy7	404 KB	Microsoft Access Ap...	7/22/2002 2:05 PM
2) dmy8	288 KB	Microsoft Access Ap...	10/17/2002 11:42 PM
2) Confys 2002	724 KB	Microsoft Access Ap...	1/23/2003 2:16 PM
2) Web Logs	724 KB	Microsoft Access Ap...	1/23/2003 2:16 PM
2) Web Logs1	9,744 KB	Microsoft Access Ap...	1/31/2003 8:48 PM
2) FTL Data Screens	246 KB	Microsoft Access Ap...	2/20/2003 11:35 AM
2) Replication Lab Set 2 Original	246 KB	Microsoft Access Ap...	2/20/2003 11:35 AM
2) Replication Lab Set 3 Original	646 KB	Microsoft Access Ap...	2/20/2003 2:41 PM
2) Replication Lab Set 1 Replica 1	506 KB	Microsoft Access Ap...	2/20/2003 2:41 PM
2) Replication Lab Set 1 Replica 2	488 KB	Microsoft Access Ap...	2/20/2003 2:41 PM
2) Replication Lab Set 1 Replica 3	646 KB	Microsoft Access Ap...	2/20/2003 2:46 PM
2) Replication Lab Set 1 Original	212 KB	Microsoft Access Ap...	2/20/2003 5:19 PM
2) Accounting Reformet	13,224 KB	Microsoft Access Ap...	2/21/2003 7:13 PM
2) Evidence	418 KB	Microsoft Access Ap...	2/21/2003 7:28 PM
2) Images	816 KB	Microsoft Access Ap...	2/24/2003 2:17 PM
2) pbserver1	206 KB	Microsoft Access Ap...	2/24/2003 2:27 PM
2) POLnetitem1	39,316 KB	Microsoft Access Ap...	2/25/2003 4:24 PM
2) FCS Logistics Data Original	194,098 KB	Microsoft Access Ap...	3/2/2003 10:55 AM
2) Updates	1,810 KB	Microsoft Access Ap...	3/2/2003 9:38 AM
2) Updates1	1,810 KB	Microsoft Access Ap...	3/2/2003 9:38 AM
2) Utilities	1,604 KB	Microsoft Access Ap...	3/31/2003 1:08 PM
2) Accounting LOGISTICS SCREENS	3,290 KB	Microsoft Access Ap...	4/2/2003 4:00 PM
2) FCS Logistics Screens 101001	3,990 KB	Microsoft Access Ap...	4/4/2003 3:36 PM
2) ORIGINAL LOGISTICS SCREENS	2,708 KB	Microsoft Access Ap...	4/11/2003 6:03 AM
2) Rack Labels	140 KB	Microsoft Access Ap...	4/15/2003 10:24 AM
2) Rack Labels1	140 KB	Microsoft Access Ap...	4/15/2003 10:24 AM
2) db2	764 KB	Microsoft Access Ap...	5/16/2003 4:09 PM
2) Auxiliary Logistics Data	1,140 KB	Microsoft Access Ap...	6/5/2003 7:10 PM
2) Utilities2	1,604 KB	Microsoft Access Ap...	6/21/2003 5:33 PM
2) Utilities1	60,912 KB	Microsoft Access Ap...	6/27/2003 3:18 PM
2) Auxiliary Logistics Screens - Converted	932 KB	Microsoft Access Ap...	7/1/2003 7:36 PM
2) Queries	5,436 KB	Microsoft Access Ap...	7/3/2003 12:02 PM
2) Queries1	5,436 KB	Microsoft Access Ap...	7/3/2003 12:02 PM
2) Copy of PolnetItems	39,316 KB	Microsoft Access Ap...	7/4/2003 5:58 PM
2) PolnetItems	39,316 KB	Microsoft Access Ap...	7/4/2003 5:58 PM

Type: Microsoft Access Application Size: 932 KB

932 KB

My Computer

EXHIBIT "A"

Microsoft Access - [Auxiliary Logistics Screens - Converted: Database]

File Edit View Insert Tools Window Help

HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY
 WATKINS DEBERRY-LEWIS/AMERICAN EXPRESS SERVICE ET AL
 CIV NO CV03 00385 SCOTLER

Open Design View X

Objects

Name

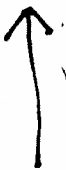
Description

Modified

Created

Type

	Create table in Design view				
	Create table by using wizard				
	Create table by entering data				
	MSysAccessObjects				
	Conversion Errors				
	Vessels	6/17/2003 9:53:23 ...	6/17/2003 9:53:23 AM		Table
	Vendor Defaults	6/17/2003 9:53:17 ...	6/17/2003 9:53:17 AM		Table: Linked Access
	System	6/17/2003 9:53:17 ...	6/17/2003 9:53:17 AM		Table: Linked Access
	Switchboard Items	6/17/2003 9:53:17 ...	6/17/2003 9:53:17 AM		Table: Linked Access
	Rates - Wharfage	6/17/2003 9:53:17 ...	6/17/2003 9:53:17 AM		Table: Linked Access
	Rates - Trucking	6/17/2003 9:53:17 ...	6/17/2003 9:53:17 AM		Table: Linked Access
	Rates - Tariff	6/17/2003 9:53:16 ...	6/17/2003 9:53:16 AM		Table: Linked Access
	Rates - Miscellaneous	6/17/2003 9:53:16 ...	6/17/2003 9:53:16 AM		Table: Linked Access
	Accounting - Order Costing Temp	6/17/2003 9:53:16 ...	6/17/2003 9:53:16 AM		Table: Linked Access
	Accounting - Order Costing Master List Temp	6/17/2003 9:53:16 ...	6/17/2003 9:53:16 AM		Table: Linked Access
	Accounting - Deferred Inland Costs	6/17/2003 9:53:16 ...	6/17/2003 9:53:16 AM		Table: Linked Access
	Accounting - Deferred Costs	6/17/2003 9:53:16 ...	6/17/2003 9:53:16 AM		Table: Linked Access
	Accounting - Container Costing Temp	6/17/2003 9:53:16 ...	6/17/2003 9:53:16 AM		Table: Linked Access
	Accounting - Container Costing Master List Temp	6/17/2003 9:53:16 ...	6/17/2003 9:53:16 AM		Table: Linked Access
	MSysRelationships	4/3/2003 9:40:12 AM	4/3/2003 9:40:12 AM		Table
	MSysQueries	4/3/2003 9:40:12 AM	4/3/2003 9:40:12 AM		Table
	MSysAccess	4/3/2003 9:40:12 AM	4/3/2003 9:40:12 AM		Table
	MSysAccess	4/3/2003 9:40:12 AM	4/3/2003 9:40:12 AM		Table



Ready

NUM SCRL

HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY
WAYNE BERRY VS HAWAIIAN EXPRESS SERVICE ET AL
CIV NO CV03 00305 SCHLEK

MUM **SCR**

Crystal Reports

File Edit View Favorites Tools Help

Back Search Folders

Crystal Reports

TARIFF 60 BILL OF LADING
Crystal Reports

Sat: 6/30/2003 10:06 AM

103 KB

Attributes: (normal)

Name	Modified	Size	Type
AR Invoicing Reviews3	6/18/2003 2:33 PM	79 KB	Crystal Reports
Auto BMS	6/18/2003 3:41 PM	47 KB	Crystal Reports
Invoice ~ Internal 061903	6/18/2003 5:17 PM	102 KB	Crystal Reports
BL - Return Pallet1	6/19/2003 1:19 PM	74 KB	Crystal Reports
Containers without Orders	6/19/2003 2:29 PM	42 KB	Crystal Reports
AP Voucher 061903	6/19/2003 4:04 PM	92 KB	Crystal Reports
HES Summary Charge Report 081302 v72	6/20/2003 2:05 PM	89 KB	Crystal Reports
AR Invoicing Worksheet - N.I. Billing	6/20/2003 2:55 PM	71 KB	Crystal Reports
HES Summary Charges 062003	6/20/2003 4:30 PM	109 KB	Crystal Reports
PU receipt	6/20/2003 5:15 PM	92 KB	Crystal Reports
Vessel-Voyage Manifest4	6/23/2003 10:26 AM	100 KB	Crystal Reports
Receiving Schedule12	6/23/2003 11:16 AM	66 KB	Crystal Reports
HES Summary Charges 070203	6/24/2003 11:24 AM	113 KB	Crystal Reports
Auto BMS14	6/24/2003 9:39 PM	47 KB	Crystal Reports
Load Planning 062603	6/27/2003 9:59 AM	83 KB	Crystal Reports
Load Planning11	6/27/2003 10:25 AM	77 KB	Crystal Reports
Load Planning13	6/27/2003 10:25 AM	77 KB	Crystal Reports
Outstanding AR	6/27/2003 3:12 PM	48 KB	Crystal Reports
Vessel-Voyage Manifest 070203	6/27/2003 4:47 PM	99 KB	Crystal Reports
Outstanding AR via Query	6/27/2003 5:43 PM	51 KB	Crystal Reports
TARIFF 60 BILL OF LADING6	6/30/2003 10:06 AM	104 KB	Crystal Reports
AP Voucher Matsun	6/30/2003 12:05 PM	92 KB	Crystal Reports
AP Voucher Horizon	6/30/2003 12:06 PM	92 KB	Crystal Reports
Invoice ~ KMart1	6/30/2003 4:55 PM	102 KB	Crystal Reports
Invoice ~ Foodland	7/1/2003 9:31 AM	103 KB	Crystal Reports
Despatching - FCL1	7/1/2003 12:18 PM	103 KB	Crystal Reports
HES Summary Charges1	7/2/2003 9:54 AM	77 KB	Crystal Reports
HES Summary Charges2	7/2/2003 12:29 PM	101 KB	Crystal Reports
HES Summary Charges	7/2/2003 12:29 PM	101 KB	Crystal Reports
BL - Tariff 601	7/2/2003 2:14 PM	96 KB	Crystal Reports
Receiving Schedule14	7/2/2003 2:35 PM	75 KB	Crystal Reports
Vessel-Voyage Manifest3	7/2/2003 4:11 PM	67 KB	Crystal Reports
Vessel-Voyage Manifest5	7/2/2003 4:30 PM	100 KB	Crystal Reports
Vessel-Voyage Manifest8	7/2/2003 4:30 PM	100 KB	Crystal Reports
HTC Schedule w Notes2	7/2/2003 8:18 PM	73 KB	Crystal Reports
Vessel-Voyage Manifest2	7/3/2003 12:16 PM	102 KB	Crystal Reports
Invoice ~ Prepaid by Order ID	7/3/2003 1:36 PM	99 KB	Crystal Reports

NOT FOR CONFIDENTIAL - ATTORNEY EYES ONLY
 WAYNE BERRY VS HAWAIIAN EXPRESS SERVICE ET AL
 CIV NO CV03-00363-SOM:ER

EXHIBIT "B"

103 KB

My Computer

Crystal Reports - [TARIFF 60 BILL OF LADING6]

File Edit View Insert Format Database Report Window Help

100%

Document Properties

WAYNE DENRY VS HAWAIIAN AIR SERVICE ET AL
CIV NO CV05-00305-SOM-LEM

Summary/Statistics

Last Saved By:

Revision Number:

Total Editing Time:

Last Printed:

Created:

Last Saved:

344

47124 min

5/7/2003 3:54:18 PM

10/9/1996 5:56:10 PM

6/30/2003 8:06:13 AM

OK

Cancel

Help

X

Fleming Companies, Inc.

Shipper/Exporter
Fleming Companies, Inc.
91-315 Hana Street
Kapolei, HI 96707

Consignee

Forward

Notify Party

Point and Country of Origin

Freightage By

Place of Receipt

Domestic Routing / Export 1

Export Carrier

Voyage No

Port of Loading

Onward Third Routing / 15

Port of Discharge

Place of Delivery

Est. Discharge Time

Est Delivery Time

Arriving Vessel

CARRIER'S RECEIPT

Particulars furnished

Field Explorer

Database Fields:

X4 Formula Fields

SQL Expression Fields

Parameter Fields

Running Total Fields

Group Name Fields

Special Fields

Field Explorer

Report Explorer

6/28/2003 17:00

Records: 0

Crystal Reports - [TARIFF 60 BILL OF LADING6]

File Edit View Insert Format Database Report Window Help

HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY
WAYNE BERRY VS HAWAIIAN EXPRESS SERVICE ET AL
CIV NO CV03 03385 COM LEK

TARIFF 60 BILL OF LADING6 X

Set Database Location

Design Preview X
TARIFF 60 BILL

Fleming Compan

Shipper/Exporter
Fleming Companies, Inc.
91-315 Hama Street
Kapolei, HI 96707

Consignee

Notify Party

Freightage By

Export Carrier Voyage No

Port of Discharge

Est. Discharge Time

CARRIER'S RECEIPT

Place of Delivery	Arriving Vessel
Est. Delivery Time	Particulars furnished

Change the location of the data source by selecting the current database (or table) and choosing the database (or table) to replace it with. Then click Update.

Current Data Source:

Database Properties
Database Type: ODBC (RDO)

DSN: MS Access Database
DBQ: ZVCS Logistics Data

Driver: 281

FILE: MS Access

MaxBufferSize: 2048

Page Timeout: 5

UID: admin

Replace with:

- ☐ Current Connections
- ☐ Favorites
- ☐ History
- ☐ Create New Connection
- ☐ Repository

Update

Close

Help

Field Explorer

Report Explorer

6/28/2003 17:00

Records: 0

Crystal Reports

File Edit View Favorites Tools Help
 Back Search Folders

HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY
 WATKINS DEPT. OF COMMERCE SERVICE ET AL
 CIV NO 03-2-00000-001 ALN

Crystal Reports

TARIFF 60 BILL OF LADINGS
 Crystal Reports

Id: 6/3/2003 3:10 PM

03 KB

Attributes: (normal)

Name	Modified	Size	Type
Summary Group3	2/3/2001 4:48 AM	222 KB	Crystal Reports
Summary Group4	2/3/2001 4:48 AM	222 KB	Crystal Reports
Summary Group5	2/3/2001 4:48 AM	222 KB	Crystal Reports
Summary With Formula	2/3/2001 4:48 AM	311 KB	Crystal Reports
Summary With Formula1	2/3/2001 4:48 AM	311 KB	Crystal Reports
Summary With Formula2	2/3/2001 4:48 AM	311 KB	Crystal Reports
Summary With Formula3	2/3/2001 4:48 AM	311 KB	Crystal Reports
Summary With Formula4	2/3/2001 4:48 AM	311 KB	Crystal Reports
Summary With Formula5	2/3/2001 4:48 AM	311 KB	Crystal Reports
Summary_Jun-Aug	3/13/2003 9:55 AM	18 KB	Crystal Reports
Summary_Jun-Aug1	3/13/2003 9:55 AM	18 KB	Crystal Reports
Summary_Sep-Nov	3/13/2003 10:13 AM	15 KB	Crystal Reports
Summary_Sep-Nov1	3/13/2003 10:13 AM	15 KB	Crystal Reports
SV wCost 980806 API (ANY Formel) (1) (1)	3/26/1999 8:20 AM	49 KB	Crystal Reports
SV wCost 980806 API (ANY Formel) (1) (1)1	3/26/1999 8:20 AM	49 KB	Crystal Reports
SV wCost 980806 API (ANY Formel) (1) (1)2	3/26/1999 8:20 AM	49 KB	Crystal Reports
TARIFF 60 BILL OF LADING	3/1/4/2003 4:20 PM	101 KB	Crystal Reports
TARIFF 60 BILL OF LADING1	3/31/2003 4:06 PM	101 KB	Crystal Reports
TARIFF 60 BILL OF LADING2	1/1/4/2003 4:25 PM	101 KB	Crystal Reports
TARIFF 60 BILL OF LADING3	6/3/2003 3:10 PM	104 KB	Crystal Reports
TARIFF 60 BILL OF LADING4	9/13/2002 5:24 PM	103 KB	Crystal Reports
TARIFF 60 BILL OF LADING5	3/1/4/2003 4:20 PM	101 KB	Crystal Reports
TARIFF 60 BILL OF LADING6	6/30/2003 10:06 AM	104 KB	Crystal Reports
TARIFF 60 BILL OF LADING7	5/28/2003 11:31 AM	104 KB	Crystal Reports
Tariffs Comprehensive	11/27/2002 11:24 AM	184 KB	Crystal Reports
Terminal Claim Form	2/25/1999 9:38 PM	66 KB	Crystal Reports
Terminal Claim Form1	2/25/1999 9:38 PM	66 KB	Crystal Reports
Terminal Claim Form2	2/25/1999 9:38 PM	66 KB	Crystal Reports
Terminal Receiving	9/26/2002 1:35 PM	85 KB	Crystal Reports
TRI PALM CONTAINERS	8/21/2002 10:21 PM	48 KB	Crystal Reports
TRI PALM CONTAINERS1	8/21/2002 10:21 PM	48 KB	Crystal Reports
TRI PALM CONTAINERS2	8/21/2002 10:21 PM	48 KB	Crystal Reports
Trip Ticket Report	10/6/1999 10:49 AM	49 KB	Crystal Reports
Trucking - FULL	8/26/1999 10:26 AM	76 KB	Crystal Reports
Trucking - FULL1	8/26/1999 10:26 AM	76 KB	Crystal Reports
Trucking - FULL2	8/26/1999 10:26 AM	76 KB	Crystal Reports
Trucking - LTL	4/11/2003 10:23 AM	79 KB	Crystal Reports
Trucking - LTL1	3/7/2003 12:47 PM	99 KB	Crystal Reports

EXHIBIT "C"

103 KB

My Computer